

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

WARREN N. McCOWAN, JOHNNY P.  
LUNA, and STEVE GUERRERO,

Plaintiffs,

vs.

Civ. No. 98-581 WWD/LFG

ALL STAR MAINTENANCE, INC.,  
TIM KING, STEVE SWITZER, and  
TRACY GORMAN,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiffs' Motion for Jury Trial as Permitted by Fed. R. Civ. P. 39(b) filed March 20, 2002 [docket no. 75]. Previously Plaintiffs attempted to obtain a jury in their pleading entitled "Jury Request" filed December 20, 1999. A motion to strike that pleading was short circuited by the granting of summary judgment during the time the motion package was being circulated. After the cause was remanded following an appeal reversing the summary judgment which had been entered, a status conference was held with the parties, and a question was raised as to whether a jury trial would be held in this cause. Following that status conference, on January 25, 2002, I filed an order striking the untimely jury demand which had been made by the Plaintiffs. In that order I pointed out that the demand was late and the tardiness was unexplained, which is still the case. Accordingly, Plaintiffs' Motion for Jury Trial as Permitted by Fed. R. Civ. P. 39(b) will be denied for the same reasons.

**IT IS SO ORDERED.**

  
UNITED STATES MAGISTRATE JUDGE